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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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Federal Communications Commission
Office of Secretary

In the matter of

Amendment of Part 1 of the

Commission's Rules --

Competitive Bidding Proceeding,

WT Docket No. 97-82

To The Commission:

**COMMENTS OF AIRADIGM COMMUNICATIONS, INC.; LOLI, INC.; NEW WAVE
COMMUNICATIONS, INC.; KMC INTERACTIVE TV, INC.; MAR IVDS, INC.; NEW
WAVE PCS, INC.; AND EUPHEMIA BANAS TO THE COMMISSION'S NOTICE OF
PROPOSED RULEMAKING**

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INTRODUCTION

Airadigm Communications, Inc., Loli, Inc., New Wave Communications, Inc.; KMC Interactive TV, Inc.; MAR IVDS, Inc.; New Wave PCS, Inc.; and Euphemia Banas (collectively "Commenters") acting through their counsel, hereby submit their comments in the above-captioned proceeding. Loli, Inc. holds IVDS licenses in several locales throughout the nation. New Wave Communications, Inc. holds five IVDS licenses in various locales throughout the nation. KMC Interactive, Inc. holds five IVDS licenses, mainly in Ohio. MAR IVDS, Inc. holds four IVDS licenses in New England and the Midwestern states. New Wave PCS, Inc. holds PCS licenses in Hawaii. Airadigm Communications, Inc. holds PCS licenses in Wisconsin. Euphemia Banas holds IVDS licenses in the Midwestern United States.

The Commenters urge the Commission to consider the effects of the proposed general competitive bidding rules on small businesses. Small businesses already face hurdles procuring sufficient financing to participate in auctions. If they are successful bidders, they often confront a whole new set of challenges in attracting adequate capital to build out their systems. In granting the Commission its auction authority and again in the Telecommunications Act of 1996, Congress highlighted the need to protect the ability of small businesses to participate in the delivery of communication services and technology to the public. The Commission must not foreclose opportunities for small businesses to participate in auctions and the subsequent delivery of services to the public as it considers its proposed generic bidding rules.

I. The Commission Should Either Gradually Phase-In or Implement in the Future the General Competitive Bidding Rules and Re-auctioned Licenses Should Use Existing Service-Specific Rules.

The Commission seeks comment on when the proposed general competitive bidding rules, if adopted, should take effect.^{1/} Commenters support a gradual phase in or implementation at a future date certain of the proposed general competitive bidding rules, subject to the modifications discussed below. The phased-in rules would then apply to all service-specific auctions, except where the Commission re-auctions licenses. In this case, the Commission should use the existing service specific rules to avoid unfair competition within a specific service and to promote equality within a service's offerings and coverage. For instance, it would be unfair to require entities competing for re-auctioned PCS C Block Licenses to satisfy financial requirements under the general competitive bidding rules in the re-auction which are greater than those under the existing service-specific rules employed in the initial auction.^{2/}

II. The Commission Must Adopt Rules For Designated Entities That Will Protect The Opportunity of Small Businesses To Participate in Auctions.

A. The Commission Should Continue to Solicit Comments On The Appropriate Small Business Size Standard in Service-Specific Rulemaking Proceedings.

The Commission proposes to continue soliciting comments on the appropriate small business size definition for each auction of specific services.^{3/} Commenters urge the Commission to consider the characteristics and capital requirements of each service and define

^{1/} See Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WT Docket No. 97-82, ¶ 18 (released February 28, 1997) (hereinafter "Notice").

^{2/} If, for example, such entities had to satisfy higher up-front payments or shorter interest-only payment periods, they would have less money to invest in building out their systems. They would be unable to compete with competitors who had greater resources because of more lenient requirements under the existing service-specific rules.

^{3/} Notice, ¶ 20.

the category of "small business" according to gross revenues.^{4/} The Commission should continue using the existing service-specific revenue requirements to determine whether an entity qualifies as a small business. It is appropriate to continue to use the service specific rules because different wireless services demand different capital requirements. For example, the IVDS service, a relatively less capital intensive business than PCS, had many more individual and small business applicants because of low, up-front and downpayment requirements, while the PCS service necessarily required millions of dollars more to build out and had higher capital barriers to entry.

B. The Commission Should Calculate Gross Revenues Based Upon the Three Most Recently Completed Fiscal or Calendar Years and Unaudited Financial Statements.

The Commission seeks comment on whether it should use the definition of "gross revenues" found in the broadband PCS rules, what time period to use for calculating gross revenues, and whether to use audited or unaudited financial statements.^{5/} Commenters believe that the calculation of gross revenues should be based on the three most recently completed fiscal or calendar years and that the Commission should permit the use of unaudited financial statements. These standards will promote greater certainty because bidders used these rules in the D, E & F Block broadband PCS auction. Similarly, it will simplify the application process for prospective bidders by removing the need to obtain a waiver or supplemental Commission order to use unaudited financial statements. A rule mandating the use of audited financial statements would be particularly unfair to small businesses, the majority of whom do not prepare such statements in the regular course of their business.

^{4/} Id.

^{5/} Id. ¶¶ 23-24.

C. The Commission Should Adopt Rules Attributing Gross Revenues That Protect The Ability of Prospective Bidders To Attract Capital.

The Commission indicates its intent to replace the "control group" structure used in the broadband and narrowband PCS auctions with a "controlling interest threshold" to evaluate whether an entity is eligible to bid as a small business.^{6/} It also solicits comment on use of an affiliation standard based upon whether an entity can exercise control over another entity and factors such as ownership and management, as well as the existence of previous and contractual relationships.^{7/}

Commenters support adding a definition of "affiliate" similar to the one proposed by the Commission. However, the Commission should retain the "control group" exception to affiliation to determine an entity's qualification as a "small business." In capital intensive services, potential bidders need to attract capital from large investors. Absent a "control-group" analysis to determine attribution, many of these relationships would cross the threshold of control and prevent a potential small business bidder from participating in the auction. Potential bidders operating under the "control group" structure could offer a large portion of their equity (i.e., up to 25 or 49 percent) to attract capital from large investors without having to attribute the investors' gross revenues towards the calculation of whether the potential bidder qualified as a small business. The control group structure also allows small businesses investment flexibility after the auction, thus enhancing their competitive position in marketplace. Elimination of the

^{6/} Id. ¶ 28.

^{7/} Id. ¶¶ 28-29.

"control group" structure would further limit small business flexibility in structuring this financing.

D. The Commission Should Establish an Installment Plan Structure to Promote Certainty And Enable Small Entities to Participate in Auctions.

The Commission proposes a tiered installment payment plan which: (a) categorizes businesses based upon their gross revenues, (b) uses the interest rate from Treasury notes as a starting point to set the installment payment plan interest rates, and (c) uses a 2-year interest-only payment period for smaller businesses, while amortizing the entire interest and principal over the term of the loan for larger businesses.^{8/} Commenters support the proposed installment payment plan, but request a five year interest-only payment period for businesses with \$15 million or less in gross revenues. This would allow small businesses to set aside sufficient capital to begin building out their systems and to benefit from an income stream from their licenses before they are saddled with large payments on the principal of their loans.

Commenters oppose the Commission's proposal to retain the authority to modify payment terms on a service-specific basis.^{9/} Changing the payment terms for each service would decrease certainty for applicants making financial arrangements and establishing business plans. If prospective bidders knew payment terms in advance from consistent competitive bidding rules, they could begin to develop business plans and obtain funding as soon as they received notice that the Commission planned to auction a service. Additionally, changing the payment terms for specific services creates confusion and hampers financing arrangements because of the uncertainty created by different payment terms for each service.^{10/}

^{8/} Id. ¶ 36.

^{9/} Id.

^{10/} For example, IVDS payments are amortized over a five-year period, rather than the ten-year term set for

Commenters support larger bidding credits in addition to installment payment options. Bidding credits will help alleviate difficulties caused by the enormous sums of capital needed to participate in auctions and enable small businesses to participate in future auctions. However, small businesses could not participate if bidding credits were adopted in lieu of an installment payment plan.

Similarly, the Commission should not increase the down payments or up-front payments as an alternative to offering higher bidding credits.^{11/} Increasing the down payment level 30 or 40 percent would force small businesses out of auctions. They would be unable to raise the capital needed to participate. This inability does not translate into an increased likelihood of default. It simply indicates that small businesses often need time to form financing arrangements to raise the capital necessary to bid and build out their systems. They also need to commit a larger proportion of their funds to working capital in order to build out their systems. Similarly, increasing the up-front payment requirement once a bidder's bid exceeds a multiple of its up-front payment would hinder the bidder's ability to obtaining financing and develop a business plan. They would be unable to know for certain the up-front payment that would be required if they altered their bids based upon other bids placed during the auction.

The Commission proposes to calculate interest rates on the installment plans based upon the coupon rate of interest offered in the most recent Treasury note auction prior to the close of the service-specific auction in question.^{12/} Commenters disagree with the Commission's

every other auctioned service. This reduced period and the uncertainty accompanying financing arrangements have harmed IVDS licensees in their effort to obtain sufficient financing and build out their systems.

^{11/} Id. ¶ 35.

^{12/} Id. ¶ 37.

contemplated formula for determining interest rates to the extent that the interest rate exceeds the government's cost of money.^{13/} Commenters oppose the Commission's standard setting the installment plan interest rate at the close of the auction based upon coupon rates from the most recent Treasury note auction. The coupon rate does not necessarily reflect the government's cost of money, which is reflected more accurately by the actual, effective interest rate, or yield, for the Treasury notes. More importantly, the Commission's PCS rule, which requires calculation of the interest rate at the time of license grant, is more appropriate because the government does not "lend" the money to installment payment licensees until the grant.^{14/} In the C-Block PCS context, the difference in interest rates was nearly one half of one percent (0.5%), which has translated into \$86 million in excess charges to small business licensees.^{15/}

Finally, Commenters strongly urge the Commission to adopt annual installment payments rather than the quarterly payments currently in effect. This would simplify the payment process for all licensees and would greatly reduce the administrative burdens of making payments four times a year.

^{13/} The Commission itself has maintained that it should not set interest rates above the government's cost of money. See Second Report and Order, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, 9 FCC Rcd 2348, ¶ 239 (1994) (stating "we also agree with those Commenters that suggest that interest on installments should be charged at a rate no higher than the government's cost of money. We recognize that, in addition to providing a source of financing that might not otherwise be available to small entities, we should impose interest in a manner that is designed to provide significant financial assistance to small businesses.") (emphasis added).

^{14/} See 47 C.F.R. 24.711(b)(3).

^{15/} See Request for Rule Waiver of Omnipoint Corporation, Broadband PCS Block C Installment Plan Interest Rate for Small Business Licensees, 16 (December 16, 1996) (noting "[F]or Omnipoint, the difference in interest payments amounts to \$17,689,446 over the ten-year term; [and] over \$2,000,000 in the first year alone.").

E. The Commission Should Adopt Bidding Credits In Addition to Installment Payment Plans.

Commenters agree with the Commission's proposal to provide bidding credits to prospective bidders.^{16/} The Commission suggests credits of 25, 15, and 10 percent for businesses that have annual gross revenues not to exceed \$3 million, \$15 million, and \$40 million respectively.^{17/} Commenters request that the Commission increase these percentages as follows: 33, 20, and 15 percent for businesses that have annual gross revenues not to exceed \$3 million, \$15 million, and \$40 million respectively. Commenters urge the Commission to adopt the increases in the level of bidding credits in addition to an installment payment plan. Such increases in conjunction with the installment plan are essential to foster small business participation in future auctions. Small businesses would be precluded from participating in auctions should the Commission adopt bidding credits in lieu of an installment payment plan.

The Telecommunications Act of 1996^{18/} requires the Commission to identify and act to eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services."^{19/} Similarly, the statute establishing the Commission's auction authority requires the Commission to "ensure that small businesses . . . are given the opportunity to participate in the provision of spectrum-based services" and contemplates the use of "bidding preferences" and other methods to guarantee this participation.^{20/} Congress found this objective to be of such importance that it instructed the

^{16/} Notice, ¶ 39.

^{17/} Id.

^{18/} 47 U.S.C. § 151 et seq.

^{19/} Id. § 257.

^{20/} Id. § 309(j)(4)(D).

Commission to conduct an investigation and submit a report indicating the extent to which small businesses have been able to participate in the competitive bidding process.^{21/}

III. The Commission Should Endeavor to Make the Application Process Easier For Small Businesses, While Ensuring the Accuracy Of Information Provided to the Commission.

A. The Commission Should Not Require The Electronic Filing of Applications Because It Has Experienced Difficulties Processing Electronically-Filed Applications.

The Commission proposes to require all applications to be filed electronically.^{22/}

Commenters oppose this proposal because the Commission has experienced difficulties in efficiently processing electronic applications in the past. In particular, several prospective IVDS bidders were unable to complete electronic filing, forcing the Commission staff to grant additional time to file. Once the original 5:30 p.m. deadline passed, the Commission easily filed the applications, which indicates that the its capacity to process electronic filings may be limited.

B. The Commission Should Adopt A Standard Definition of Major Amendments and Should Permit Applicants to Bid on Additional Licenses.

Commenters support the Commission's proposal to define major amendments to FCC Form 175 in a uniform manner.^{23/} A standard definition limiting when an applicant may submit supplemental or additional information after an initial application deadline will promote certainty and uniformity in the application process. The Commission seeks comment on whether -- and if so, until what point in the process -- it should allow applicants to add licenses to their FCC Form 175 applications.^{24/} The Commission suggests that applicants might be able to add licenses up

^{21/} Id. § 309(j)(12)(D)(iv).

^{22/} Notice, ¶ 46.

^{23/} Id. ¶ 48.

^{24/} Id.

until the deadline for submitting up-front payments.^{25/} Commenters believe the Commission should permit applicants to qualify to bid on additional licenses, but only until the release of the Public Notice listing all applicants and the markets for which they qualify to bid. After this point, applicants might attempt to add licenses strategically rather than to enhance their competitive position to provide a service.

C. The Commission Should Adopt Narrow Ownership Disclosure Requirements And Avoid Disclosing Unnecessary Information About Losing Applicants.

The Commission advocates requiring applicants to disclose on their short-form application their gross revenues and the names of each controlling principal and affiliate and the amount of the principals' and affiliates' gross revenues.^{26/} Commenters strongly oppose having to disclose gross revenues in their FCC Form 175 applications. The Commission should only require auction winners to disclose their gross revenues because the gross revenues of the losing applicants are irrelevant. Only after an applicant has won an auction, does it become important whether the applicant has sufficient gross revenues to meet its payment obligations. Losing applicants should not have their financial information made public over the Internet and from the FCC as part of public documents. This information is sensitive and may be used by competitors in a strategic manner. Limiting the disclosure of financial information to auction winners also will simplify administrative burdens by removing the need for confidentiality requests from concerned applicants.

Furthermore, adequate safeguards exist to ensure that bidders have the resources to cover their bids. Prospective participants must certify that they meet the eligibility requirements for

^{25/} Id.

^{26/} Id. ¶ 52.

service-specific auctions and they are financially qualified. The Commission does not verify the information provided on applicants' FCC Form 175s prior to an auction. Outside parties may petition the Commission to challenge an applicant's financial qualifications, but only after the applicant has won the auction. Third parties may not challenge the ability of an applicant to pay for a license prior to an auction in an attempt to prevent the applicant from bidding, which would result in "pre-auction" litigation and a delay in the auction. Sufficient safeguards now exist so as not to require disclosures by losing bidders.

D. The Commission Should Establish a Database of Licensee and Bidder Data, But The Information Must Be Readily Available to Licensees and Bidders.

Commenters agree with the Commission that establishing a database containing disclosure information from previous applications could save applicants' time if they only needed to update the information or certify that it was current every time they bid.^{27/} It is important that this information be available to licensees and bidders. Permitting the public to have access to applicants' financial disclosure information could prove detrimental if competitors used the information to the disadvantage of applicants' business interests. Licensees and bidders would need access to the information to verify its accuracy and to know what elements of the information would need to be updated.

E. The Commission Should Conduct Random Audits to Verify Eligibility Information Provided in Applications, So Long As the Commission Affords Applicants Reasonable Time To Provide Information and Issues Written Findings.

The Commission indicates that it should reserve the right to conduct random audits of applicants and licensees to verify the eligibility information provided in their applications.^{28/}

^{27/} Id. ¶ 54.

^{28/} Id. ¶ 55.

Commenters believe the Commission should be able to conduct such audits, so long as they provide a reasonable time for applicants and licensees to comply with the requests for information. Additionally, the Commission should be required to issue written findings to auditees.

IV. The Commission Should Adopt Payment Rules That Protect The Rights of Small Businesses.

A. The Commission Should Continue Its Practice of Refunding the Up-front Payments of Bidders Who Withdraw From Auctions Prior to the Conclusion of Competitive Bidding.

Commenters support the Commission's proposal to refund the up-front payments of bidders who withdraw from auctions before the conclusion of bidding. Any other proposal would place unnecessary restrictions on the funds of auction bidders, many of whom may be small businesses.

B. The Commission Should Structure Down Payments To Avoid Complicating Financing Arrangements.

The Commission proposes to grant the Bureau discretion to set the level of down payments for each auction.^{29/} Commenters oppose affording the Bureau this discretion because it could single out small businesses unfairly by requiring disproportionately large down payments for auctions of particularly capital-intensive services. More likely, granting the Bureau this discretion could complicate financing arrangements by having down payment amounts that varied with each auction. Applicants would have difficulty developing business plans and securing financing because they would face uncertainties concerning the amount of the down payments they would need to tender.

^{29/}

Id. ¶ 59.

The Commission advocates permitting winning bidders to make their second down payments or final payments within a short period after the applicable deadline, so long as they pay a late fee.^{30/} It envisions the late fee period as being no longer than 10 business days.^{31/} Commenters disagree with the Commission's view of an acceptable late period and urge the Commission to adopt a period of 60 days from the time of the announced deadline. This period would afford applicants, and in particular small business applicants, the time necessary to arrange complicated financing and manage the inherent uncertainty in the timing of financing arrangements.

The Commission advances the proposal of having all designated entities make their second down payment at the same time, regardless of whether any of the designated entities have had petitions to deny filed against them.^{32/} Commenters oppose this proposal and advocate retaining the current system, whereby winning bidders that are designated entities do not have to pay their second down payment until any petitions to deny filed against them have been dismissed or denied. Under the proposed payment plan, financing could be jeopardized by a pending petition to deny. The Commission proposes placing the second down payments of any winning bidders who have petitions to deny pending against them into an escrow account until these petitions are resolved. However, the interest on the escrow deposits must be given to the Telecommunications Development Fund and applicants will therefore lose the time value of their funds. More importantly, the funds could be tied up indefinitely while the Commission processes pending petitions to deny.

^{30/} Id. ¶ 61.

^{31/} Id.

^{32/} Id. ¶ 65.

C. The Commission Should Require A Default Deposit of No More Than Three Percent of the Amount of the Defaulted Bid.

Commenters agree with the Commission that a default deposit of three percent of the defaulted bid amount would serve to discourage defaults on the part of bidders and would encourage bidders to make back-up financing arrangements. A default deposit above three percent would needlessly penalize defaulting bidders, who do not intend to default on their payment obligations.

D. The Commission Should Modify the Installment Payment Provisions to Provide Licensees with Adequate Time to Meet Their Payment Obligations and Should Not Impose Additional Penalties For Licensees Who Default on Their Payments.

The Commission contemplates a five percent late fee of the amount past due for installment payments paid after their due date, yet within the 90-day grace period for overdue installment payments.^{33/} Commenters believe that the late fee should only be imposed after the initial 90-day grace period has expired. Assessing the late fee at an earlier stage will further harm licensees who need cash, as evidenced by their tardiness in meeting their payment deadlines. Imposing the late fee immediately will force licensees to devote precious cash flow to paying a fine, instead of meeting their payment obligations.

The Commission proposes to require all licensees who use the grace periods to pay all fees and all interest accrued during the grace periods with the first scheduled payment following the grace periods.^{34/} It also advocates revising the grace period request mechanism so that if a payment obligation is not made within 90 days of its due date, the licensee automatically receives an additional 90 days to make the payment, so long as the licensee pays the five percent

^{33/} Id. ¶ 70.

^{34/} Id. ¶ 73.

late fee.^{35/} The licensee could obtain an additional 90 days to make its payment, subject to an additional 10 percent late fee.^{36/} The Commission would not require the licensee to request permission to use the grace periods, but the Commission would cancel the license of any licensee who did not pay the total of the installment payments due plus late payment fees of 15 percent at the end of the 180-day combined grace periods.^{37/}

Commenters strongly oppose the Commission's proposal because it eliminates licensees' ability to present the individual financial circumstances that merit revision of the payment deadlines. In many cases 90 or 180 days may not be a sufficient grace period. The current system of case-by-case determinations by the Commission provides a more fair basis for permitting licensees to take advantage of grace periods. Commenters oppose the late payment fees because they are excessive. These fines hurt licensees when they need help the most because they are unable to make an installment payment. Excessive financial penalties will hinder licensees' ability to restore their financial position and thus preclude them from making timely installment payments.

The Commission should adopt a system whereby a licensee who cannot make an installment payment is afforded a 90-day grace period without penalty. After these 90 days, the licensee may take another 90-day grace period subject to a five percent late fee. If a further grace period is needed, the licensee would be required to file a statement demonstrating financial

^{35/} Id., ¶ 74.

^{36/} Id.

^{37/} Id.

distress as provided under the rules.^{38/} Should the further grace period be denied, the licensee would have 10 days to pay its overdue balance or the Commission would cancel its license.

Commenters strongly disagree with the Commission's proposal to impose penalties on licensees that default on their payment obligations. Licensees that default are already losing the entire investment in their license. No further penalties should be imposed because there is no need for an additional deterrent. The Commission also seeks comment on whether it should cross default its installment payment plan loans with other installment payment loans to the same licensee.^{39/} Commenters object to the cross-default proposal because it unfairly affects a licensee's entire business operations based upon a single default for a single license. Once again, there is no need for a further deterrent when a licensee will lose the entire investment in its license upon default. Should the Commission decide to adopt the cross-default provision, it must apply it using a case-by-case approach rather than according to a general rule. A uniform rule affecting all of a licensee's licenses based on a single license default would have the far-reaching and unintended consequences of causing business failures. Finally, Commenters would like the Commission to clarify that, should it ultimately adopt a cross-default provision, the Commission would not apply the cross-default provisions to affiliates of the defaulting licensee.

V. The Commission Should Award Defaulted Licenses to the Second Highest Bidder and Should Not Set Minimum Mandatory Bids.

The Commission seeks comment on several options for defaulted licenses including whether it should re-auction defaulted licenses or offer them to the second highest bidder at that bidder's final bid.^{40/} Commenters believe the Commission should offer defaulted licenses to the

^{38/} See 47 C.F.R. § 1.2110(e)(4)(ii).

^{39/} Notice, ¶ 78.

^{40/} Id. ¶ 97.

second highest bidders in each auction and not conduct second auctions. Offering the licenses to the second highest bidders would enable potential licensees to obtain the licenses more quickly and would permit the Commission to adhere to its contemplated time guidelines for the government financing process for each service.

Commenters oppose having the Commission establish mandatory minimum bids at which licenses should be offered.^{41/} The market should decide the value of the licenses. Setting mandatory minimum bids would artificially inflate the price of licenses, which would particularly hurt small businesses because they often raise just enough capital to submit their bids and build out their systems. If the market does not value a license at the price of the mandatory minimum bid, then bidders who bid this price may not sufficient cash flow to build out their systems. Furthermore, there is no reason to believe that the Commission is in a better position to value licenses than bidders in the market.^{42/}

VI. The Commission Should Permit Entities to Invest in a Second Applicant for a License in the Same Market if the Original Applicant Withdraws from the Auction.

The Commission proposes allowing entities to invest in a second applicant for a license in the same market as the original applicant the entity supported, if the original applicant withdraws from the auction.^{43/} Commenters support this proposal because it would facilitate the movement of additional capital into the auction and would provide funding sources for entities who traditionally have had difficulties arranging financing.

^{41/} Id. ¶ 86.

^{42/} Commenters note that the D, E & F Block broadband PCS licenses illustrate this point. The price per MHZ-pop was far lower for the D, E & F Block licenses than licenses in the C Block auction.

^{43/} Id. ¶ 101.

VII. The Commission Should Allow Auction Winners to Begin Construction Upon the Release of a Public Notice Announcing That The Commission is Accepting Applications.

The Commission seeks comment on whether it should allow auction winners to start construction once it has announced that it is accepting the filing of long-form applications, regardless of whether petitions to deny have been filed against these applications.^{44/} Auction winners would initiate construction at their own risk. Commenters support this proposal and agree with the Commission's view that pre-grant construction would speed the deployment of new services and technologies to the public. This proposal is consistent with the Commission's cellular rules and thus promotes regulatory parity among competing CMRS services.

CONCLUSION

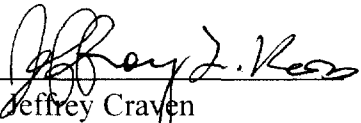
Congress went to great lengths in granting the Commission its auction authority and again in the Telecommunications Act of 1996 to stress that the Commission must include small businesses in the competitive bidding process and in the deployment of new technologies and services to the public. The Commission now has an opportunity to establish generic competitive bidding rules that will foster small businesses participation in auctions. By adopting rules that promote certainty in the auction process and assist small businesses in obtaining the capital necessary to bid on licenses and build out systems, the Commission will ensure that small businesses can participate in the competitive bidding process and operate successful business ventures once they acquire licenses.

^{44/} Id. ¶ 104.

Respectfully submitted,

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